IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7863 of 1999
with
CIVIL APPLICATION NO. 14779 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO.LTD.

Versus

MULIBEN WD/O MUKESH JESING PARGI

Appearance:
MS AVANI S MEHTA for Petitioner
MR UM SHASTRI for Respondent No. 1
MR MM TIRMIZI for Respondent No. 7
UNSERVED-REFUSED (N) for Respondent No. 9
RULE SERVED for Respondent No. 10,11

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/09/2000

ORAL JUDGEMENT (per J.N. Bhatt, J)

The following questions has been raised before us by the learned advocate for the appellant Ms. Avani Mehta in this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the New Act') challenging the judgement and award recorded by the Motor Accident Claims Tribunal (Auxiliary), Panchmahals at Godhra in MACP No. 391 of 1996 whereby the respondents herein original claimants heirs and legal representatives of the deceased Mukesh Jesing Pargi came to be awarded an amount of Rs. 5,44,640/- with interest at the rate of 15% per annum on 21.8.1999.

That the claim petition is not maintainable as the deceased Mukeshbhai was travelling in a hired tempo bearing registration No. GJ-17T 8184 to transport dowry articles to village Chakalia. The tempo was being driven by the original opponent No. 4 driver who subsequently came to be deleted. It was a vehicle not meant for carrying of passengers. It was a goods vehicle and therefore the insurer is not bound to indemnify loss caused to the insured.

2. This submission is not acceptable in view of the latest decision rendered in NEW INDIA ASSURANCE COMPANY VS. SATPAL SINGH reported in AIR 2000 SC 235. There is is no dispute about the fact that the accident in question occurred on 13.3.1996. The deceased Mukeshbhai, husband of original claimant No. 1 and other persons had hired said tempo for the purpose of transporting dowry articles to village Chakalia. The deceased Mukeshbhai was travelling along with goods in a tempo. When the said tempo reached near Kharwa bridge. There was an accident. Two vehicles collided which resulted into death of Mukesh who was the owner of the goods in the opposite tempo. He had sustained serious injuries and he succumbed to the same thereafter.

3. It becomes quite clear that the accident occurred after the introduction and operation of Motor Vehicles Act, 1988 as the date of accident was 13.3.1996. Section 147 of the new Act is very important which reads as under:-

"147 - Requirements of policies and limits of liability - (1) In order to comply with the requirements of this Chapter, a policy of Insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person (including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

provided that a policy shall not be required (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle or

(ii) to cover any contractual liability.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

4. It becomes crystal clear that proviso to Section 147(1) of the Act shows that it is a recast provision of placing erstwhile clause (iii) as the present clause (ii). In other words, clause (iii) of the proviso to Section 95(1) of the Old Act is totally non-existent in proviso to Section 147(1) of the Act. It means that under Section 147 of the New Act, the policy must be a policy which insures the person or class of persons specified in the policy to the extent specified in sub-section (2) - (i) against any liability which may be incurred by him in respect of death of or bodily injury to any person (including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(ii) against death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

5. It could, very well, be visualised from the aforesaid provision that proviso to said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides a policy of insurance shall cover any liability incurred in respect of any accident upto the following limits:

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand;

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

6. It could, therefore, very well, be concluded that in sub-section (2) there is no upper limit for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of an accident. In this state of affairs, it is clear that the limit contained in the Old Act has been removed and the policy should insure liability incurred and cover the injury to any person including owner of the goods or his

authorised representative/agent carried in the vehicle. It is, therefore, very clear that the Parliament has, in its wisdom, taken care even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy whichever is earlier. It would, therefore, become very clear that after the said expiry of four months a new insurance policy consistent with the new Act is required to be obtained.

7. The net result is that under the new Act an insurance policy covers third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance policy in respect of any accident which is occurred after the introduction of the new Act.

8. Reliance placed on behalf of the appellant on the decision in the case of Mallawwa Vs. Oriental Insurance Co. Ltd. reported in AIR 1999 SC 589 is of no avail in view of the peculiar factual position emerging in the present case. In Mallawwa Vs. Oriental Insurance Co. Ltd. (supra) the claims were under the old Act of 1939. So is not the factual position in the present appeal. Admittedly, the accident has occurred on 13.3.1996. Therefore, in our opinion, the case is governed by the decision of the Supreme Court in the case of New India Assurance Company Vs. Satpal Singh (supra) and not by Mallawwa's case (supra). The net result would be that the first contention deserves to be rejected and, accordingly, it is rejected.

9. Obviously, it would, now, lead us to the appreciation and examination of the amount of compensation awarded by the Tribunal. The Tribunal has, considering both the heads, pecuniary and non-pecuniary, awarded consolidated sum of Rs. 5,55,640/- to the widow and minors of deceased Mukesh Jesing Pargi holding that he was earning Rs. 5000/- per month. The contention that the claimants have not proved that the deceased was earning at the relevant time, an amount of Rs. 5000/- is not acceptable. The decased was doing centering work and he was earning Rs. 5000/- per month as held by the Tribunal. In this connection, evidence of one Manishbhai Samjibhai, who is brother in law of the deceased examined

at Exh. 25, has in clear terms testified before the Tribunal that deceased was working and he was engaged in centering work and he was earning at least an amount of Rs. 5,000/- per month, at the relevant time. However, without entering into future and perspective earnings of the deceased who was aged 30 years at the relevant time when the accident occurred, the Tribunal has deducted Rs. 1000/- towards his pocket expenses and thereafter also 1/3rd is deducted for personal expenditure and net dependency value is assessed at Rs. 2,670/- and it is assessed at Rs. 32,040/- as annual dependency value of the deceased of the common family fund. The approach of the Tribunal, in our opinion, by no stretch of imagination could be said to be liberal. If we were to offer our views, we would be tempted to say that it was on a conservative side and important part of assessment of the compensation in a case of death or personal injury arising out of a vehicular accident is prospective earning of the victim of the accident which has not been considered at all. Apart from that, the Tribunal considering the income as it then stood of the deceased, has given a sum of Rs. 5,44,640/- by way of compensation to the widow and minors. In our opinion, this amount of compensation cannot be said to be unjust, unreasonable or on a higher side requiring our interference at this stage. Even under the structured formula as contemplated by the provisions of Section 163-A of the Act, 18 multiplier could have been adopted looking to the age of the deceased. Forget that part, be it as it may, the amount awarded by the Tribunal is on the lower side and therefore, the only fate this appeal deserves is dismissal. Accordingly, it is dismissed.

We may make it clear that in course of submissions, learned advocate for the appellant had tendered copies of the relevant evidence for our perusal and examination and therefore we do not deem it necessary to call for record and proceedings of the lower court. We returned the same to the learned advocate Ms. Avani S. Mehta.

In view of the order passed in the matter, no orders are passed on the Civil Application.

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